

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

[R05-84]

PREAMBLE

1. Sections Affected

Article 5
R20-1-501
R20-1-502
R20-1-503
R20-1-504
R20-1-505
R20-1-506
R20-1-507
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R20-1-514

Rulemaking Action

New Article
New Section
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2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-1512.01(C)
Implementing statute: A.R.S. § 41-1512.01

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 587, January 28, 2005

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Sherri Lee, Program Manager
Address: 1700 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-1233
Fax: (602) 771-1210
E-mail: sherril@azcommerce.com

5. An explanation of the rule, including the agency's reasons for initiating the rule:

A.R.S. § 41-1512.01 (part of Arizona 2004 legislation HB 2140) establishes the military installation fund, to be administered by the Department of Commerce. The Department, in conjunction with the Military Affairs Commission established by A.R.S. § 41-1512, is charged with adopting rules for receiving and evaluating applications for monies from the fund.

The proposed rules prescribe procedures for the application and disbursement of these funds, which are intended to create a mechanism to compensate willing landowners within the territory of Arizona's military airports, military

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facilities, and operating areas to ensure compatible land use around Arizona's military installations. The rules also address disbursement of funds for military installation preservation and enhancement projects under A.R.S. § 41-1512.01(G)(2).

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Davis-Monthan Air Force Base Joint Land Use Study dated February 2004, published by and available for review at the Department of Commerce by contacting the person listed in item #4 of this Notice of Proposed Rulemaking

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The rule does not diminish a previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

The impact is expected to be positive. The amount of the fund is \$4.825 million annually for a period of 20 years.

Arizona's network of military facilities positions the state at the forefront of the current transformation of the U.S. military and represents an essential component of the state economy. The network comprises an integrated array of bases, testing and training facilities, ranges, and airspace that operate within a physical environment that is uniquely suited to their individual and combined mission objectives and to the nation's evolving defense posture. This defense strategy is defined in the Department of Defense *Quadrennial Defense Review Report* released in September 2001. The report details a shift in military planning from a threat-based model (who and where) to a capabilities-based model that focuses on how the enemy might fight. The importance of Arizona's military facilities and operations to the transformation of the U.S. military cannot be understated: their emphasis on joint and combined operations and cutting-edge intelligence gathering and exploitation lies at the heart of the new defense paradigm and positions Arizona to satisfy the needs of the Department of Defense for many years to come. Furthermore, Arizona's military industry generates thousands of jobs, billions of dollars in economic activity, and hundreds of millions of dollars in state and local tax revenue. The stability of employment and tax revenues produced by the Arizona military industry is indispensable to the fiscal health of the state. The long-term retention of Arizona's network of military facilities and the sustainability of their missions are thus vital to the security of the nation and the strength of the state economy.

Arizona's military facilities and operations should be treated as an industry that is a foundation of the state economy. The 2002 Maguire study, *Economic Impact of Arizona's Principal Military Operations*, states that total employment impact, total output, and total annual tax revenues for Arizona's military industry equaled 83,506 jobs, \$5.66 billion, and \$233.6 million respectively for Tax Year 2000. The stable nature and high-pay-scale value of military jobs make them a fundamental part of the state economy. Recognizing the military industry as a separate economic cluster in Arizona is critical to the efforts to educate the public about its importance to the fiscal health of Arizona.

Actions have to be taken at the local level to support the long-term retention and sustainability of military facilities, and the state needs to provide tools to accomplish this. Innovative approaches that cities, counties, and towns should consider include working with active military airports to establish maximum mission contours and expanded approach/departure corridors that ensure compatible land use and maintain essential quality of life for local residents; utilizing the Graduated Development Concept to graduate densities away from the high-noise contours and APZs; encouraging the purchase or transfer of development rights by creating incentives for developers to reduce intensity and density in areas that are significant to base missions while increasing density in other areas; purchasing agricultural lands around military facilities that are most affected by safety and noise considerations and leasing them back to farmers for agricultural use; and creating a consistent mechanism for military base outreach pertaining to environmental and growth issues.

Because of the wide range of possible projects with varying local impacts, it is difficult to estimate or generalize about the potential economic impact of this fund.

The sum of \$75,000 and 1 FTE is appropriated from the state general fund in fiscal years 2004-2005 and 2005-2006 and each year thereafter to the Department of Commerce. The sum of \$100,000 is appropriated from the state general fund in fiscal years 2004-2005 and 2005-2006 and each year thereafter to the Attorney General's office for implementation of this Act.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Sherri Lee, Program Manager
Address: 1700 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-1233
Fax: (602) 771-1210
E-mail: sherril@azcommerce.com

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Oral proceedings are scheduled:

Monday, April 18, 2005, at 7:00 p.m. at the Randolph Golf Club in the Copper Room, 600 S. Alvernon Way, Tucson, AZ 85701

Tuesday, April 19, 2005, at 5:30 p.m. at the Sierra Vista City Council Chambers, 1011 N. Coronado Dr., 2nd floor, Sierra Vista, AZ 85635

Tuesday, April 26, 2005, at 6:00 p.m. at Estrella Mountain Community College in the North Community Room, 3000 N. Dysart Rd., Avondale, AZ 85323

Wednesday, April 27, 2005, at 5:30 p.m. at the Yuma County Health Department Auditorium, 2200 W. 28th St., Yuma, AZ 85364

Closing date for written comments: April 27, 2005

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

As allowed by A.R.S. § 41-1032, it is intended that these rules become effective immediately upon filing with the Secretary of State under A.R.S. § 41-1031, in order to provide a benefit to the public. There is no penalty associated with a violation of these rules.

12. Incorporations by reference and their location in the rules:

R20-1-501(4) incorporates the following maps by reference:

- a. Airport Vicinity Map for Luke Air Force Base dated June 20, 2002;
- b. Luke Air Force Base Auxiliary Airfield 1, dated March 15, 2004;
- c. Marine Corps Air Station Yuma Land Use Boundaries, dated July 19, 2001;
- d. Yuma Air Station Auxiliary Airfield 2, dated July 20, 2004;
- e. Gila Bend Auxiliary Airfield, dated October 8, 2004;
- f. Figure 5-1 (Notional Noise Contours) and Figure 5-2 (Compatible Land Use Plan Zones) from the *Davis-Monthan Air Force Base Joint Land Use Study* dated February 2004; and
- g. For the Fort Huachuca Military Reservation, Map 7 from the *City of Sierra Vista General Development Plan*, dated October 24, 2002.

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

ARTICLE 5. MILITARY INSTALLATION FUND

Section

<u>R20-1-501.</u>	<u>Definitions</u>
<u>R20-1-502.</u>	<u>Notice of Application Deadline and Public Comment Period</u>
<u>R20-1-503.</u>	<u>Administrative Review</u>
<u>R20-1-504.</u>	<u>Application for Acquisition of Private Property</u>
<u>R20-1-505.</u>	<u>Application for Project Funding</u>
<u>R20-1-506.</u>	<u>Leaving Applications on File</u>
<u>R20-1-507.</u>	<u>Department Solicitation of Comments</u>
<u>R20-1-508.</u>	<u>Department Report to Commission and Notice of Hearing</u>
<u>R20-1-509.</u>	<u>Scoring Applications for Acquisition of Private Property</u>
<u>R20-1-510.</u>	<u>Criteria for Projects</u>

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<u>R20-1-511.</u>	<u>Military Affairs Commission Recommendation</u>
<u>R20-1-512.</u>	<u>Department Decision</u>
<u>R20-1-513.</u>	<u>Military Installation Preservation and Enhancement Project Reporting Requirements</u>
<u>R20-1-514.</u>	<u>Appeals</u>

ARTICLE 5. MILITARY INSTALLATION FUND

R20-1-501. Definitions

In addition to the definitions provided in A.R.S. § 41-1501, the following definitions apply to this Article unless the context otherwise requires:

1. "Accident potential zone" has the meaning in A.R.S. § 28-8461(1) and (2), as shown in the maps incorporated by reference in subsection (4).
2. "Clear zone" has the meaning in A.R.S. § 28-8461(8).
3. "Development right" means any right to undertake and complete the development of real property for a particular use.
4. "High noise zone" means the areas designated as "high noise zones" on the military facility maps listed below. The maps are available from the Department, incorporated by reference, and do not include any later revisions:
 - a. Airport Vicinity Map for Luke Air Force Base dated June 20, 2002;
 - b. Luke Air Force Base Auxiliary Airfield 1, dated March 15, 2004;
 - c. Marine Corps Air Station Yuma Land Use Boundaries, dated July 19, 2001;
 - d. Yuma Air Station Auxiliary Airfield 2, dated July 20, 2004;
 - e. Gila Bend Auxiliary Airfield, dated October 8, 2004;
 - f. Figure 5-1 (Notional Noise Contours) and Figure 5-2 (Compatible Land Use Plan Zones) from the Davis-Monthan Air Force Base Joint Land Use Study dated February 2004; and
 - g. For the Fort Huachuca Military Reservation, Map 7 from the City of Sierra Vista General Development Plan, dated October 24, 2002.
5. "Military Affairs Commission" means the Arizona Military Affairs Commission established under A.R.S. § 41-1512.
6. "Military installation" has the same meaning in A.R.S. § 41-1512(E).
7. "Property" means all real property including development rights.

R20-1-502. Notice of Application Deadline and Public Comment Period

- A. The Department shall publish the application deadline for awards from the military installation fund established under A.R.S. § 41-1512.01 in a newspaper at least 60 days before the application deadline, as well as posting it on the Department's web site, announcing it to the news media, and making it available from the Department during normal working hours.
- B. The Department's notice shall state that copies of submitted applications will be available for public review at the Department and that members of the public may submit written comments to the Department within the time specified in the notice.

R20-1-503. Administrative Review

The Department shall perform a review of an application within 45 days from the application deadline, and shall return any application not meeting the requirements of this Article with a written notice of deficiencies. The applicant may resubmit the application with the deficiencies corrected within 15 days from the date on the written notice of deficiencies. The Department shall return any application resubmitted after the 15 days. The Department shall reject any application not resubmitted with deficiencies corrected within the 15 days. The Department shall complete the review in 60 days, and shall not accept any further revisions or additions to any application after the review.

R20-1-504. Application for Acquisition of Private Property

- A. An applicant shall comply with the requirements of this Section according to the deadline under R20-1-502.
- B. The applicant shall submit an application and four legible copies of the completed application to the Department.
- C. The applicant shall provide the following information, on or with the application form:
 1. The property owner's name, mailing address, telephone number, and, if available, fax number and e-mail address;
 2. If applicable, the name of the property owner's representative or agent, and the mailing address, telephone number, and, if available, fax number and e-mail address;
 3. If the property owner is represented by another person, written consent for representation signed by the property owner;
 4. A completed "Application Checklist" form available from the Department, listing all items included as part of the application;
 5. The legal description of the location of the property;
 6. A statement of the property the owner is offering for acquisition;
 7. A map of the real property showing its relationship to the specified military installation;

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8. The date the property was acquired by the current property owner;
9. A statement of legal ownership by the property owner;
10. A list of all known recorded or unrecorded mortgages, encumbrances, liens, and easements on the property;
11. A statement disclosing any known environmental conditions on the property;
12. A written description of any improvements and the date the improvements were made upon the property;
13. A narrative explaining the applicant's eligibility to apply for an award from the military installation fund;
14. The amount of funds requested, and the amount and source of any supplemental funding available for the acquisition;
15. A written explanation describing the property owner's inability to use or limitation on the use of the property and how long the inability or limitation has existed;
16. A written explanation of measures taken by the applicant to mitigate the impact of the military installation on the property and the property owner;
17. Any documents from the military installation, city, town, county, or other entity or individual that support or oppose the proposed acquisition;
18. A written explanation or other documentation providing information the applicant believes will assist the Department and the Military Affairs Commission regarding the acquisition request; and
19. The signature of the property owner or the owner's representative verifying that all information in the application is accurate and correct to the best of the property owner's or the representative's knowledge, under penalty of perjury.

R20-1-505. Application for Project Funding

- A.** A city, town, or county seeking funding for a military installation preservation and enhancement project (project) shall submit an application as prescribed in this Section and according to the deadline under R20-1-502. The applicant under this Section is the representative authorized by the requesting jurisdiction.
- B.** The applicant shall submit an original application and four legible copies of the completed application to the Department.
- C.** The applicant shall provide the following information, as applicable, on or with the application form:
 1. The name of the requesting jurisdiction;
 2. The applicant's name, mailing address, telephone number, and, if available, fax number and e-mail address;
 3. The date the project request was approved by the requesting jurisdiction;
 4. A completed "Application Checklist" form available from the Department, listing all items included as part of the application;
 5. The names of the persons or organizations the jurisdiction will work with on the project;
 6. The name of the proposed project with a brief summary of the project proposal;
 7. A written narrative explaining the project in detail, including how it will preserve or enhance the military installation and any proposed starting and ending dates;
 8. The estimated budget for the project, with a description of any other funding source that may be used;
 9. The amount of funding requested from the military installation fund;
 10. If the project includes proposed acquisition of private property, the information and items required under R20-1-504;
 11. A statement of any past action taken by the jurisdiction to preserve the military installation;
 12. Any documents from the military installation, city, town, county, or other entity or individual that support or oppose the proposed project;
 13. A written explanation or other documentation the applicant believes will assist the Department and the Military Affairs Commission regarding the project; and
 14. The signature of the applicant verifying that all information in the application is accurate and correct, to the best of the applicant's knowledge, under penalty of perjury.

R20-1-506. Leaving Applications on File

An applicant may leave a complete application with no deficiencies on file with the Department for a maximum of five years. The Department shall consider the application each year along with all new applications received if the applicant submits a written request to the Department during the annual application period under R20-1-502. The Department shall rank each application each year regardless of years under consideration. The applicant shall include the following information in the written request:

1. The name of the property owner, or the name of the requesting jurisdiction, as originally filed with the Department; and
2. Either a statement that the information in the application as previously submitted is current, or a statement of specific amendments to the original application.

R20-1-507. Department Solicitation of Comments

Before providing the Military Affairs Commission with its recommendation regarding an application, the Department shall contact the applicable military installation, city, town, county, and any other entity that may have an interest in the application. The Department shall request written comments regarding the application.

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R20-1-508. Department Report to Commission and Notice of Hearing

- A.** The Department shall compile and forward to the Military Affairs Commission a report that includes the following:
1. All applications accepted as complete under R20-1-503;
 2. Any written comments received under R20-1-502(B) and R20-1-507;
 3. All evaluation scores and ranking under R20-1-509;
 4. Available funding calculated using the funding formula under A.R.S. § 41-1512.01(G); and
 5. The recommended funding distribution.
- B.** At least 14 days before the Commission meeting at which applications will be considered, the Department shall provide each applicant with a written notice of the date, time, and location of the meeting, and a copy of the Department's report.

R20-1-509. Scoring Applications for Acquisition of Private Property

The Department shall rank applications in order of score. The Department shall use the following evaluation criteria to score applications for acquisition of private property. The Department shall not combine the score for subsections (1) and (2):

1. Location of the property. When there is a range of points, the Department shall assign the highest score to property in closest proximity to the runway. If the property is in more than one zone, the Department shall assign the highest applicable score.
 - a. Clear zone: 300 points;
 - b. Accident potential zone 1 defined in A.R.S. § 28-8461(1): 250-290 points;
 - c. Accident potential zone 2 defined in A.R.S. § 28-8461(2), including compatible use zone II as shown in the map incorporated by reference in R20-1-501(4)(f): 200-240 points;
 - d. High noise zone, according to the day-night sound levels in decibels under A.R.S. § 28-8481(J):
 - i. Decibel level 85 or more: 190 points;
 - ii. Decibel level 80-84: 175 points;
 - iii. Decibel level 75-79: 160 points;
 - iv. Decibel level 70-74: 140 points;
 - v. Decibel level 65-69: 125 points.
2. Property located outside of clear zones, accident potential zones, and high noise zones, but which, based on written input, is vital to the preservation or enhancement of a military installation: 0-175 points;
3. The extent of the property owner's inability to use, or limitation on the use of, property according to zoning regulations and state statute enacted for the preservation of the military installation: 0-95 points;
4. Based on written input, the acquisition of the property by the state may prevent or reduce encroachment or any other activity that could hinder preservation of the military installation or its ability to accomplish its mission: 0-90 points;
5. The length of time that the property has been owned by the applicant, with the highest score going to the longest period of ownership: 0-80 points;
6. Measures the applicant has taken to preserve the military installation or to mitigate any impacts of the military installation: 0-60 points.

R20-1-510. Criteria for Projects

The Military Affairs Commission shall consider the following criteria in evaluating military installation preservation and enhancement projects under R20-1-511:

1. How the project will preserve or enhance the military installation;
2. The availability of additional funding for the project from other sources;
3. Whether acquisition of property for the project could prevent or reduce encroachment or any other activity that could hinder preservation of the military installation, or the ability to accomplish its mission;
4. Past actions taken by the jurisdiction to preserve the installation;
5. Whether the project will improve the condition of the base, land, facilities, or associated airspace through multi-use opportunities;
6. Whether the project will mitigate impacts of the military installation on the surrounding community.

R20-1-511. Military Affairs Commission Recommendation

- A.** The Military Affairs Commission shall review the Department's report under R20-1-508. The Commission may allow oral testimony at its open meeting for review of applications.
- B.** The Military Affairs Commission shall determine its recommendation to the Department based upon:
1. The likelihood of the proposed project or the acquisition of private property to preserve and enhance the mission of a military installation, and
 2. The economic efficiency of applying the fund for the greatest protection or enhancement of a military installation.
- C.** The Commission shall transmit its written recommendation under A.R.S. § 41-1512.01(D) to the Department, including any direction and alternatives to the Department, within seven days of its decision.

R20-1-512. Department Decision

The Department shall review the recommendations of the Military Affairs Commission and decide whether to accept, accept with a reduced amount, or deny an application submitted under R20-1-504 or R20-1-505, and shall provide each applicant with a copy of its written decision within 21 days of the Military Affairs Commission's recommendation. The Department shall include in its written decision the reasons for denial or reduction and include a copy of R20-1-514. Payment from the fund for acquisition of private property is contingent upon satisfactory completion of legal requirements for acquisition of property within nine months of the Department's written decision.

R20-1-513. Military Installation Preservation and Enhancement Project Reporting Requirements

- A.** For the purpose of this Section, a "successful applicant" is any jurisdiction awarded funds for a military installation preservation and enhancement project from the military installation fund under this Article.
- B.** Each successful applicant shall provide the Department with a written report within six months of the Department's decision under R20-1-512 on the progress of the project for which it received funds, and shall include in the report an accounting of military installation fund monies received and used. The successful applicant shall make additional written reports to the Department every six months until completion of the project, or until all requirements for the acquisition are completed.

R20-1-514. Appeals

- A.** An applicant whose application for military installation funding is denied or the amount reduced by the Department may file an appeal with the Department by submitting a letter to the Director providing reasons for protesting the decision within 30 days of the date of the final written decision under R20-1-512.
- B.** The Director shall review the substance of the protest and respond in writing, by mail to the applicant, within 30 days of receipt of the protest.
- C.** Appeals beyond the Department are prescribed in A.R.S. Title 41, Chapter 6, Article 10, *Uniform Administrative Hearing Procedures*.